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4 **MUSGROVE, DRUTZ & KACK, P.C.**
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7 (928) 445-5935

8 *Attorneys for Defendants*

9 FILED
10 Clerk
11 FEB 14 2006
12 BY SHEETAL PATEL
13 AM ✓

14 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**
15 **IN AND FOR THE COUNTY OF YAVAPAI**

16 JOHN B. CUNDIFF and BARBARA C.
17 CUNDIFF, husband and wife; BECKY
18 NASH, a married woman dealing with her
19 separate property; KENNETH PAGE and
20 KATHRYN PAGE, as Trustee of the Kenneth
21 Page and Catherine Page Trust,
22
23 Plaintiffs,
24
25 v.
26 DONALD COX and CATHERINE COX,
27 husband and wife,
28 Defendants.

Case No. CV 2003-0399
Division No. 1
PARTIAL FINAL JUDGMENT

29 This matter having come before the Court on Defendants' Motion for Summary Judgment
30 Re: Agricultural Activities, and following oral argument thereon on July 26, 2005, the Court finds
31 as follows:

32 1. There is no factual issue which precludes the Court from making a determination as
33 a matter of law whether the conduct of the Defendants on the real property described on Exhibit "1"
34 attached hereto ("**Subject Property**") violates paragraph 2 of the Declaration of Restrictions which

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7-10-2006

1 was recorded on June 13, 1974 in Official Records of Yavapai County, Arizona at Book 916, Page
2 680 ("**Declaration**"), a copy of which is attached hereto as Exhibit "2".

3
4 2. The Court finds as a matter of law that the conduct of Defendants does not violate
5 paragraph 2 of the Declaration as it is not a trade, business or commercial profession or any other
6 type of commercial or industrial activity initiated or maintained on the Subject Property or any
7 portion thereof.

8
9 3. The Court finds as a matter of law that Plaintiffs are not entitled to any relief on
10 Count I of the First Amended Complaint.

11 4. The Court finds as a matter of law that Plaintiffs are not entitled to any relief under
12 Counts IV and V of the First Amended Complaint based upon a violation of Paragraph 2 of the
13 Declaration.

14
15 5. Pursuant to Rule 54(b), Ariz. R. Civ. P., there is no just reason for delay in entering
16 partial final judgment in this matter and the Clerk of the Court is directed to enter judgment in this
17 matter as follows:

18
19 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as
20 follows:

21 1. Defendants' Motion for Summary Judgment Re: Agricultural Activities is granted
22 and Count I of Plaintiffs' First Amended Complaint is hereby dismissed with prejudice as are the
23 claims in Count IV and V of the First Amended Complaint seeking declaratory and injunctive relief
24 based upon a violation of Paragraph 2 of the Declaration.

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26 2. Defendants are awarded their reasonable attorneys' fees in the amount of \$60,560.75
27 with interest thereon at the statutory rate.
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3. Defendants are awarded taxable costs in the amount of \$3,135.00 with interest thereon at the statutory rate.

DONE IN OPEN COURT this 18th day of February, 2006.


JUDGE, YAVAPAI COUNTY SUPERIOR COURT

All that portion of Section 25, Township 15 North, Range 1 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

BEGINNING at the East quarter corner of Section 25 marked with a GLO brass cap monument;

Thence South 00 degrees, 04 minutes, 15 seconds East, 660.28 feet along the East line of Section 25 to a one half inch rebar and the TRUE POINT OF BEGINNING;

Thence South 00 degrees, 04 minutes, 15 seconds East, 660.28 feet to a one half inch rebar;

Thence North 89 degrees, 59 minutes, 02 seconds West, 1321.37 feet;

Thence North 00 degrees, 03 minutes, 08 seconds West, 660.32 feet;

Thence South 89 degrees, 58 minutes, 54 seconds East, 1321.15 feet to the TRUE POINT OF BEGINNING.

EXCEPT all oil, gas, coal and minerals as set forth in instrument recorded in Book 192 of Deeds, Page 415.

Exhibit "1"

FILE

When recorded, return to:
Robert D. Conlin
222 North 7th Street Phoenix, Az 85006

STATE OF ARIZONA, County of Yavapai - 17161
I do hereby certify that the within instrument was filed and recorded at the request of Tom Lynch
on June 13 A.D. 1974 at 1:35 o'clock P. M. Book 916 Official Records
Page 688-681-682 Records of Yavapai County, Arizona.

WITNESS my hand and official seal the day and year first above written.
PATSY C. JENNEY, County Recorder
By Cary S. Hampton, Deputy

LUUYUTE SPRINGS RANCH

DECLARATION OF RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

That Robert D. Conlin and Margaret Dell Conlin, his wife, and David A. Conlin, Jr., husband of Anna Conlin, dealing with his sole and separate property, being the owners of all the following described premises, situated in the County of Yavapai, State of Arizona, to-wit:

GOVERNMENT LOTS One (1) and Two (1) and the South half of the Northeast quarter and the Southeast quarter of Section One (1); all of Section Twelve (12); the East half and the East half of the East half of the Southwest quarter and the East half of the East half of the Northwest quarter and the Northwest quarter of the Northeast quarter of the Northwest quarter of Section Thirteen (13); the East half of Section Twenty-four (24); the East half of Section Twenty-five (25), all in Township Fifteen (15) North, Range One (1) West of the Gila and Salt River Base and Meridian; and

All of Section Six (6); all of Section Seven (7), GOVERNMENT LOTS One (1), Two (2), Three (3), and Four (4), and the Southeast quarter of the Southwest quarter and the South half of the Northeast quarter of the Southwest quarter of Section Nineteen (19), all in Township Fifteen (15) North, Range One (1) East of the Gila and Salt River Base and Meridian.

and desiring to establish the nature of the use and enjoyment of the premises hereinabove described, sometimes hereinafter referred to as property or premises, does hereby declare said premises subject to the following express covenants and stipulations as to the use and enjoyment thereof, all of which are to be construed as restrictive covenants running with the title to said premises and each and every part and parcel thereof and with each and every conveyance thereof hereafter made to-wit:

1. Each and every parcel of the above-described premises shall be known and described as residential parcels; that is to say, mobile, modular or permanent dwellings may be erected and maintained upon said premises, subject to limitations with respect thereto as hereinbelow set forth.
2. No trade, business, profession or any other type of commercial or industrial activity shall be initiated or maintained within said property or any portion thereof.
3. Said property or any portions thereof shall not be conveyed or subdivided into lots, parcels or tracts containing less than nine (9) gross acres, nor shall improvements be erected or maintained in or upon any lot, parcel or tract containing less than such nine (9) gross acres.
4. No structure or improvement of any kind or nature whatsoever shall be erected, permitted or maintained upon, over or across the easements or reservations for utilities or drainage, if any.
5. Residence buildings must be completed within twelve (12) months from commencement of construction. No garage, carport or other building shall be commenced or erected upon any portion of said property until the main dwelling building complying with this Declaration is under construction or has been moved onto the premises. Commencement of construction, for the purposes of this Declaration, shall be deemed to be the date material, raw or otherwise, shall have been placed or stored upon the premises.
6. All residence buildings to be erected, constructed, maintained or moved upon the premises or any portion thereof, as the case may be, shall be of new construction. Residence buildings shall have concrete foundations and hardwood or concrete floorings.

BOOK 916 PAGE 680

Exhibit "2"

7. (a) All single family residences other than mobile homes shall require 1,000 square feet of ground floor area including storage but exclusive of any portion thereof used for open porches, pergolas, patios, carports or garages, whether or not they are attached to, or adjacent to said residence.

(b) Mobile homes shall (1) contain not less than 720 square feet of ground floor area devoted to living purposes; (2) be not less than 12 feet in width; (3) be placed so that the floor thereof is not more than 8 inches above the ground level;

(c) Travel Trailers or campers may occupy homesites during vacation periods, not to exceed three (3) weeks in any one season, or during the period of residence construction.

(d) No prefabricated or pre-erected dwelling having less than the above applicable square foot requirements, exclusive of open porches, pergolas or attached garage, if any, shall be erected, permitted or maintained on any portion of said property.

(e) No structure whatever other than one single family dwelling or mobile home, as herein provided, together with a private garage for not more than three (3) cars, a guest house, service quarters and necessary out buildings shall be erected, placed or permitted to remain on any portion of said property.

8. No 'Real Estate' or 'For Sale' sign or signs exceeding 24" by 24" may be erected or maintained on said premises. No general advertising signs, billboards, unsightly objects or public or private nuisances shall be erected, placed or permitted to remain on any portion of said premises.

9. No abandoned auto or auto parts or used machinery or other salvage or junk shall be placed or permitted to remain on any portion of said premises.

10. No swine shall be raised, bred or kept upon said premises. Said premises shall not be used in any way or for any purpose that may emit foul or noxious odors.

11. No mobile home shall be used or permitted to remain upon any lot unless such mobile home shall have two hundred (200) square feet of permanent roof, exclusive of mobile home roofing, and two hundred (200) square feet of concrete flooring, including cabanas, porches, storage, carports and garages, but aclusive of any portion thereof used as flooring or base for said mobile home.

12. All structures on said lots shall be of new construction, not exceeding 30 feet in height, and no buildings shall be moved from any other location onto any of said lots with the exception of prefabricated or pre-erected dwellings where the use thereof is permitted.

13. No temporary building may be moved onto or constructed on said premises, with the exception of temporary shop or office structures erected by contractors, or buildings during the actual bonafide construction of a permitted structure upon the premises, provided the contractor or builder agrees to remove such temporary shop or office structure within five (5) days after the actual final completion date of his construction activities of the premises.

14. No construction shed, basement, garage, tent, shack or other temporary structure shall at any time be used as a residence either temporarily or permanently.

15. No residence or dwelling shall be occupied or used prior to installations therein of water flush toilets and sanitary conveniences or facilities and shall be maintained in a sanitary manner and in conformity with all applicable local, county or state laws, as the case may be. No outside toilet or other sanitary conveniences or facilities shall be erected or maintained upon said premises.

16. All garbage or trash containers, oil tanks, bottled gas tanks and other such facilities must be underground or placed in an enclosed area so as to not be visible from the adjoining properties.

17. The foregoing restrictions and covenants run with the land and shall be binding upon all parties and all persons claiming through them until June 1, 1994, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, or so long thereafter as may be now or hereafter permitted by law.

18. Invalidation of any of the restrictions, covenants or conditions above by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

175-34

19. If there shall be a violation or threatened or attempted violation of any of said covenants, conditions, stipulations or restrictions, it shall be lawful for any person or persons owning said premises or any portion thereof to prosecute proceedings at law or in equity against all persons violating or attempting to, or threatening to violate any such covenants, restrictions, conditions or stipulations, and either prevent them or him from so doing or to recover damages or other dues for such violations. No failure of any other person or party to enforce any of the restrictions, rights, reservations, limitations, covenants and conditions contained herein shall, in any event, be construed or held to be a waiver thereof or consent to any further or succeeding breach or violation thereof. The violation of these restrictive covenants, conditions or stipulations or any one or more of them shall not affect the lien of any mortgage now of record, or which hereafter may be placed of record, upon said premises or any part thereof.

IN WITNESS WHEREOF, the above named parties have executed the within Declaration of Restrictions this 12th day of June, A.D., 1974.

[Signature]
Robert D. Conlin
[Signature]
Margaret Dell Conlin
[Signature]
David A. Conlin, Jr.

STATE OF ARIZONA }
County of Maricopa } ss.

On this, the 12th day of June, 1974, personally appeared Robert D. Conlin and Margaret Dell Conlin, his wife.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My commission expires 2-20-77

[Signature]
Notary Public

STATE OF ARIZONA }
County of Maricopa } ss.

On this, the 12th day of June, 1974, personally appeared David A. Conlin, Jr.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My commission expires 2-20-77

[Signature]
Notary Public